

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs January 30, 2007

**STATE OF TENNESSEE v. TROY WAYNE RUTLEDGE**

**Appeal from the Criminal Court for Sullivan County**  
**No. S46,661    Phyllis H. Miller, Judge**

---

**No. E2006-00954-CCA-R3-CD - Filed March 28, 2007**

---

The defendant's probation officer entered a probation violation warrant for receiving a speeding ticket, committing the offense of allowing dogs to run at large, failing to report a citation for driving on a suspended license and failing to present his probation identification card.<sup>1</sup> Following a hearing, the trial court revoked the defendant's probation and ordered him to serve his originally-imposed sentence for possession of marijuana for re-sale and money laundering. We have reviewed the record on appeal and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and J. CURWOOD WITT, JR., JJ., joined.

Clifton Corker, Johnson City, Tennessee, for appellant, Troy Rutledge.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Greeley Wells, District Attorney General; and Teresa Smith, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On August 28, 2003, the defendant pled guilty to one count of possession of seventy pounds or more of marijuana with the intent to sell and eight counts of money laundering. The trial court sentenced him to an effective sentence of eight years requiring one year of service and twelve years

---

<sup>1</sup> As noted *infra*, one of the conditions of the defendant's probation was to present his probation identification card to the authorities during an encounter with them.

of intensive probation. On December 6, 2004, the trial court transferred the defendant from intensive probation to regular probation.

On July 30, 2005, Deputy Tim Weems stopped the defendant for traveling fifty-three miles per hour in a thirty-five mile per hour zone. When Deputy Weems asked the defendant for identification, the defendant replied that he had left his wallet at home. Deputy Weems requested that dispatch look up the defendant's information and discovered that the defendant had a suspended driver's license. Deputy Weems issued the defendant a citation for speeding and driving on a suspended license. The defendant never produced his probation identification card during the traffic stop.

Probation Officer Janet Burgess had been the defendant's probation officer since December 1, 2004. On August 3, 2005, the defendant reported that he had received a speeding ticket on July 30, 2005. However, Ms. Burgess discovered upon further investigation that the defendant had also been issued a citation for driving on a suspended license and that the defendant failed to present his probation identification card to Deputy Weems.

Sullivan County Department of Animal Control Officer Aaron West received several complaints from defendant's neighbors regarding the defendant's unconfined pit bulls. Officer West issued two warnings to the defendant. In September of 2005, Officer West issued a final warning. In October of 2005, the Department of Animal Control received a picture of the defendant's dogs running loose. After receiving the picture, the Department filed charges against the defendant. The Department asked the sheriff's office to serve the defendant. The sheriff's office contacted Ms. Burgess to assist them in serving the defendant because the personnel at the sheriff's office believed that the defendant was trying to evade service. On November 16, 2005, Ms. Burgess served the defendant. These charges resulted in a conviction on December 14, 2005 for allowing dogs to run at large.

On January 18, 2006, Ms. Burgess obtained a probation violation warrant. This warrant alleged that the defendant had violated three conditions of his probation:

Violation of Rule #1, "I will obey the laws of the United States, or any State in which I may be, as well as any municipal ordinances." To-wit: Count 1: The subject committed the offenses of Speeding and Driving on a Suspended License on or about 7-30-05 in Sullivan County, Tennessee as charged by Deputy Tim Weems. Count 2: The subject committed the offense of Dogs Running at Large on or about 9-20-05 and 10-15-05 in Sullivan County, Tennessee as charged by Aaron West, Sullivan County Animal Control.

Violation of Rule #2, "I will report all arrests, including traffic violations/citations immediately, regardless of the outcome to my Probation Officer within 72 hours."

To-wit: The subject failed to report the traffic citation for Driving on a Suspended License he received on 7-30-05.

Violation of Rule #5, "I will when away from my residence, have on my person my probation identification card and will present it to proper authorities." To-wit: The subject failed to present his probation identification card to Deputy Tim Weems on or about 7-30-05 when he received a citation for Speeding and Driving on a Suspended License.

On April 7, 2006, the trial court held a hearing on the probation violation. Following the hearing, the trial court revoked the defendant's probation and ordered him to serve his eight-year sentence in incarceration with credit for time served in custody.

### ANALYSIS

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. Tenn. Code Ann. § 40-35-310 & -311. After finding a violation of probation and determining that probation should be revoked, a trial judge can: (1) order the defendant to serve the sentence in incarceration; (2) cause execution of the judgment as it was originally entered, or, in other words, begin the probationary sentence anew; or (3) extend the probationary period for up to two years. See Tenn. Code Ann. §§ 40-35-308(c) & -311(e); State v. Hunter, 1 S.W.3d 643, 647-48 (Tenn.1999). The decision to revoke probation rests within the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). An abuse of discretion is shown if the record is devoid of substantial evidence to support the conclusion that a violation of probation has occurred. Id. The evidence at the revocation hearing need only show that the trial court exercised a conscientious and intelligent judgment in making its decision. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

This Court concludes the trial court did not abuse its discretion. There was substantial evidence, including the testimony of Deputy Weems, Officer West and Ms. Burgess, presented at the probation violation hearing that shows that the defendant violated conditions of his probation. We conclude that "the trial court exercised a conscientious and intelligent judgment in making its decision." Id.

Therefore, this issue is without merit.

### **CONCLUSION**

For the foregoing reasons, we affirm the judgment of the trial court.

---

JERRY L. SMITH, JUDGE